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06 UNITED STATES DISTRICT COURT
07 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

08 REGINALD BELL, SR.,)
09 Plaintiff,) CASE NO. C10-0376-MJP
10 v.)
11 JENNIFER JACKSON, et al.,) ORDER
12 Defendants.)
13 _____)

14 This matter comes before the Court on Bell’s objections to Magistrate Judge Theiler’s
15 Report and Recommendation (Dkt. No. 171). Having reviewed the Fourth Amended
16 Complaint in this 42 U.S.C. § 1983 action, the pending motions, the Report and
17 Recommendation of United States Magistrate Judge Mary Alice Theiler (Dkt. No. 171),
18 Plaintiff’s objections to that report (Dkt. No. 173, 172, 179, 181), Defendants’ replies (Dkt.
19 Nos. 174, 175, 176, 177, 178, 180, 182, and 183), the governing law, and the balance of the
20 record, the Court issues the following ruling.

21 **Background**

22 Plaintiff Reginald Bell (“Bell”) is a state prisoner who alleges defendants conspired to

01 violate his constitutional rights to due process and family association by kidnapping his
02 children as retaliation for Bell accessing the courts. (Dkt. No. 40, Fourth Amended Complaint
03 at 21-60.) Defendants are Department of Health and Human Services (“DHHS”) caseworkers,
04 the volunteer guardian ad litem (“GAL”) for the children and her legal advisors in King County
05 Superior Court, and attorneys who were involved in dependency and parental termination
06 proceedings or criminal matters. (Id. at 5-10.)

07 In the Report and Recommendation, Magistrate Judge Theiler recommended the Court
08 dismiss or grant summary judgment in favor of (1) the DHHS caseworkers (Jackson, Minnis,
09 Burton, Marrs, Nystrom and Harris) for failure to state a claim, collateral estoppel and
10 immunity; (2) the attorneys involved in the dependency proceedings or criminal matters
11 (Varnado-Rhodes, Hoekendorf, Jean, and Israel) because Defendants are not state actors for §
12 1983 purposes, Plaintiff fails to state a claim, and/or Plaintiffs’ claims are time-barred; (3)
13 Community Correction Officer Lee because Plaintiffs’ claims are time-barred and Plaintiff fails
14 to state a claim, (4) the King County Defendants who coordinate the CASA Program (Milano,
15 Irwin and Nagel) based on the Rooker-Feldman Doctrine and quasi-judicial immunity. CASA
16 is a program run by the state superior court and serves children under 12 years of age who have
17 allegedly been abused or neglected, and a trained CASA volunteer represents the best interests
18 of the child throughout the legal proceedings.

19 Discussion

20 1. Dispositive Motions

21 Bell filed two objections to Magistrate Judge Theiler’s Report and Recommendation,
22 which together exceed the Local Rules’s twelve-page limit for objections by seventy-some

01 pages. See Local Rule 72. In response, Defendants request Bell's objections be stricken.
02 The Court declines to do so since, even considering the objections in their entirety, Bell's
03 objections are unpersuasive. Bell's objections largely repeat factual arguments made before
04 Magistrate Judge Theiler but do not address the legal basis for which his claims fail.

05 First, Bell's claims against the DHHS social workers fail due to collateral estoppel and
06 qualified immunity. While Bell argues in his objections that he was not a party to the state
07 court proceeding and therefore collateral estoppel does not apply, the Court finds the argument
08 unavailing. (Dkt. No. 173, Pltf's Objs to R&R at 15-21.) As Magistrate Judge Theiler noted,
09 Bell received adequate notice of all hearings related to the dependency, Bell refused to
10 participate in court hearings, adequate services were offered to Bell and he did not avail himself
11 of those services; and Bell did not visit his children during the entirety of the dependency
12 process. (Dkt. No. 148-1.) Collateral estoppel applies because Bell was a party to the
13 proceeding even if he refused to participate. To the extent Bell argues collateral estoppel does
14 not apply because no state court judgment was issued, the record clearly contradicts him. (See
15 Dkt. No. 144-8.)

16 In addition, Bell's claims fail because the DHHS social workers are entitled to absolute
17 immunity. As held in Miller v. Gammie, social workers are entitled to absolute immunity for
18 the discretionary decisions and recommendations they make during dependency proceedings.
19 335 F. 3d 889, 897 (9th Cir. 2003). The only exception is if social workers fabricate evidence.
20 Beltran v. Santa Clara County, 514 F.3d 906, 908 (9th Cir. 2008). Here, Bell failed to support
21 his allegations that the DHHS social workers fabricated evidence in the dependency
22 proceedings; therefore, the DHHS workers remain absolutely immune from suit. See Beltran

01 v. Santa Clara County, 514 F.3d 906, 908 (9th Cir. 2008). Since collateral estoppel and
02 absolute immunity applies to the DHHS social workers, the Court finds Bell's objections fail
03 and GRANTS summary judgment in favor of the DHHS social workers.

04 Second, Bell's claims against his criminal and dependency proceedings attorneys
05 (Hoekendorf, Israel, Jean and Varnado-Rhodes) are either time-barred or without merit. Bell's
06 claim against Hoekendorf is that, in February 2006, Hoekendorf violated his civil rights by
07 failing to secure him a ride from Lewis County Jail to King County Jail for a hearing and
08 apparently did not represent him adequately. Similarly, Bell's claim against Jean is that, in
09 2004, Jean failed to take certain actions on his behalf which led to him being falsely arrested
10 and imprisoned. Likewise, Bell's claim against Varnado-Rhodes is that Varnado-Rhodes
11 failed to adequately represent him in dependency proceedings held in 2005 and 2006. All of
12 these claims fail because Bell did not file the claims within the three-year statute of limitations.
13 See RK Ventures, Inc. v. City of Seattle, 307 F.3d 1045, 1058 (9th Cir. 2002). In addition, even
14 if he had filed within the time limit, Hoekendorf and Jean were not state actors for purposes of §
15 1983 liability. See Polk County v. Dodson, 454 U.S. 312, 325 (1981)(finding public defenders
16 are not state actors for purposes of § 1983 liability). With respect to Israel, the Court finds Bell
17 fails to state a plausible claim. Israel was the counsel for the children's mother, not Bell. In
18 sum, the Court DISMISSES Bell's claims against Hoekendorf and Jean with prejudice and
19 GRANTS Varnado-Rhodes's summary judgment motion because Bell's claims are
20 time-barred. The Court DISMISSES Bell's claims against Israel with prejudice because Israel
21 was not a state actor and, as counsel for Bell's wife, not Bell, could not have violated his
22 constitutional rights.

01 Third, Bell's claims against Community Correction Officer Lee fail because they are
02 time-barred. Even if Lee engaged in a conspiracy to extradite Bell to California in 2004, Bell
03 did not file his claim within the three-year statute of limitations. Id. Despite Bell's lengthy
04 objections, Bell presents no argument to the Court suggesting the statute of limitations does not
05 apply. The Court DISMISSES Bell's claims against Lee with prejudice.

06 Fourth, Bell's claims against the CASA program defendants fail because the
07 Rooker-Feldman doctrine divests this Court of jurisdiction to review the validity of the state
08 proceedings regarding Bell's parental rights. The Rooker-Feldman doctrine prevents federal
09 courts from second-guessing state-court decisions by barring the lower federal courts from
10 hearing de facto appeals from state-court judgments. See Rooker v. Fidelity Trust Co., 263
11 U.S. 413 (1923); D.C. Ct. of Appeals v. Feldman, 460 U.S. 462 (1983). Bell's claim is a de
12 facto appeal of the state court's decision to terminate his parental rights. Even if the state court
13 decision was in error, this Court lacks jurisdiction to consider Bell's claim. The Court
14 DISMISSES Bell's claims against the CASA program defendants with prejudice.

15 2. Other Motions

16 A. Defendants' Motion for Vexatious Litigant Order

17 The DHHS Defendants request a vexatious litigant order that bars Bell from filing
18 against them without prior leave of the Court. See 28 U.S.C. § 1651(a). A pre-filing order is
19 granted only after cautious review because such sanctions "tread on a litigant's due process
20 right of access to the courts." Molski v. Evergreen Dynasty Corp., 500 F.3d 1047, 1057 (9th
21 Cir. 2007). Here, Bell sued DHHS once in a related federal proceeding. See Bell v. DSHS, No.
22 C07-72-JCC (W.D.Wash., filed Jan. 12, 2007). The Court finds this is not vexatious. Since it

01 would threaten Bell's access to the courts to enter a pre-filing order, the Court DENIES the
02 motion.

03 B. Bell's Motions

04 Bell filed several non-dispositive motions, all of which the Court finds unavailing.
05 First, Bell filed motions to strike evidence and exhibits offered to support DHHS Defendants'
06 motion for summary judgment. (Dkt. Nos. 158 and 159.) Given that the documents were
07 accompanied by declarations testifying to their accuracy, the documents submitted were
08 properly authenticated and the Court finds no basis for striking them. See Fed. R. Evid.
09 901(b)(1). The Court DENIES Bell's motions to strike.

10 Second, the Court agrees with Magistrate Judge Theiler's recommendation regarding
11 Bell's motion for issuance of a subpoena. (Dkt. No. 162.) Bell fails to articulate with
12 particularity how the requested depositions would allow him to respond to any of the
13 dispositive motions. While Bell believes the motion for a subpoena detailed the exact
14 evidence he hoped to elicit, Dkt. No. 162, the Court finds Bell's motion fails to explain how any
15 of the requested information is relevant to his action. Bell's motion is DENIED.

16 Third, Bell's motion to enjoin the state court judgment, motion for removal, motion for
17 reconsideration of an order denying reconsideration, motion to strike Varnado-Rhodes's
18 motion for summary judgment, and motion for a writ of mandamus are DENIED as meritless.
19 (Dkt. Nos. 116, 131, 135, 163 and 165.) As discussed above, this Court cannot enjoin a state
20 court judgment under the Rooker-Feldman doctrine. In addition, despite lengthy objections,
21 Bell has not shown the drastic and extraordinary remedy of a writ of mandamus should issue to
22 require three judges to consider this civil action at the district court level. See Ex parte Fahey,

01 332 U.S. 258, 259-60 (1947). The Court DENIES Bell's motions as meritless.

02 3. Revocation of IFP status on appeal

03 The Court has found all of Bell's claims against Defendants frivolous. In addition to
04 inundating the Court with frivolous motions, Bell has filed objections to the Magistrate Judge's
05 Report and Recommendation that far exceeds the twelve-page limit. Thus, the Court certifies
06 that any appeal of this matter by Bell would not be taken in good faith and revokes Plaintiff's in
07 forma pauperis status on appeal. 28 U.S.C. § 1915(a)(3); see also Hooker v. American
08 Airlines, 302 F.3d 1091, 1092 (9th Cir. 2002)(revocation of IFP status is appropriate where
09 district court finds the appeal to be frivolous). Bell may re-apply to the United States Court of
10 Appeals for the Ninth Circuit for IFP status on appeal.

11 4. Defendant Sharon Stephens

12 The Court observes Magistrate Judge Theiler's Report and Recommendation did not
13 address Sharon Stephens. Sharon Stephens was not served and is the only remaining
14 Defendant. (See Dkt. No. 52 (mail returned as undeliverable).) Under Rule 4(m), a
15 defendant must be served within 120 days after the complaint is filed. Fed. R. Civ. P. 4(m).
16 On behalf of Bell, the Court attempted to serve Stephens by mail. However, based on the
17 address provided by Bell; the mailing was returned as undeliverable. (Dkt. No. 52.) The
18 Court ORDERS Bell to provide the Court with an accurate address for Stephens within twenty
19 (20) days of entry of this Order; otherwise, the Court will dismiss without prejudice all claims
20 against Sharon Stephens.

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Conclusion

The Court does hereby find and ORDER:

- (1) The Report and Recommendation is ADOPTED;
- (2) The motions to dismiss filed by Vera Jean, Dennis Lee, David Hoekendorf, David Israel, the King County Defendants (Maria Milano, Lori Irwin, and Heidi Nagel) (Dkts. 68, 72, 73, 87, 90) are GRANTED and these claims are DISMISSED with prejudice;
- (3) The motions for summary judgment in favor of Sharon Varnado-Rhodes and the DHHS Defendants (Duane Minnis, Jennifer Jackson, Corliss Nystrom, Theresa Burton (previously Theresa Farrow), Mary Marrs, and Daryllyn Harris) (Dkts. 123, 142) are GRANTED;
- (4) The other pending motions (Dkts. 88, 116, 131, 135, 158, 159, 162, 163, 165) are DENIED;
- (5) Plaintiff's in forma pauperis status on appeal is REVOKED;
- (6) Plaintiff's motion to continue time to object is GRANTED and both of his objection briefs were considered (Dkt. No. 172); and
- (7) Plaintiff is ORDERED to provide the Court with the correct address of Defendant Sharon Stephens within twenty (20) days of entry of this Order; otherwise she will be dismissed without prejudice.

01 The Clerk of Court is directed to send copies of this Order to plaintiff and to Magistrate
02 Judge Mary Alice Theiler.

03 DATED this 9th day of January, 2012.
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07 Marsha J. Pechman
08 United States District Judge
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